

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MARC EMMERICK,)
)
Plaintiff,)
)
v.) No. 3:07-cv-13
) (Phillips/Guyton)
MARSHA PENLEY/GROSECLOSE)
and S&K FAMOUS BRANDS, INC.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the undersigned pursuant to 28 U.S.C. § 636(b), the Rules of this Court, and by Order [Doc. 17] of the Honorable Thomas W. Phillips, United States District Judge, for disposition of Plaintiff Emmerick's Motion to Compel Electronic Mail Messages and Data [Doc. 16].

The plaintiff, proceeding *pro se*, moves the Court for an Order compelling the defendant S&K Famous Brands, Inc. to produce "network backup tapes magnetic or other media etc., containing electronic mail messages, plus other Data relating to sales and sales analysis, payroll, condition of store, losses, scheduling, quotas, customer satisfaction, and other information stored as Electronic Data and or otherwise stored Data that is not in a backed-up format." Specifically, the plaintiff alleges that he requested various documents during the Rule 26(f) discovery conference and through written interrogatories and requests for production that have not been produced.

The defendant opposes the plaintiff's motion on various grounds, arguing that the plaintiff's motion to compel violates the requirements of the Federal Rules of Civil Procedure and this Court's Local Rules; that the plaintiff seeks production of documents and other things based on an alleged agreement that was never made between the parties; and that the plaintiff's written discovery is extraordinarily broad in scope. [Doc. 19].

The Court finds that the plaintiff's motion to compel violates the requirements of the Federal Rules of Civil Procedure, which requires a party seeking to compel the disclosure of discovery to certify in the party's motion "that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or materials." Fed. R. Civ. P. 37(a)(2)(B). The plaintiff's motion does not contain any such certification, and the defendant represents in its response that the plaintiff made no effort prior to the filing of this motion to obtain the requested documents without court intervention. On this basis alone, the Court finds that the plaintiff's motion should be denied.

The Court further finds that the plaintiff's motion to compel violates Local Rule 37.2, which requires a motion to compel to contain "a verbatim recitation of each interrogatory, request, answer, response, and objection which is the subject of the motion or a copy of the actual discovery document which is the subject of the motion." E.D.TN. LR 37.2. In the present case, the plaintiff's motion fails to set forth a verbatim recitation of the defendant's discovery responses to which the plaintiff objects. Accordingly, the Court finds that the plaintiff's motion should also be denied on this basis.

For the foregoing reasons, Plaintiff Emmerick's Motion to Compel Electronic Mail Messages and Data [Doc. 16] is **DENIED** without prejudice, with leave to re-file upon compliance with Fed. R. Civ. P. 37(a)(2)(B) and E.D.TN. LR 37.2.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge